

State of California
DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Workers' Compensation

**NOTICE OF FURTHER MODIFICATION TO TEXT OF
PROPOSED REGULATIONS**

Subject Matter of Regulations: Workers' Compensation Benefit Notices and Medical Provider Networks

Title 8, California Code of Regulations, Sections 9767.1, 9767.16, 9810, 9811, 9812, 9813, 9813.1 and 9813.2

NOTICE IS HEREBY GIVEN, pursuant to Government Code section 11346.8(c) that the Acting Administrative Director of the Division of Workers' Compensation, proposes to modify the text of the following proposed amendments to Title 8, California Code of Regulations:

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|-----------------|--|
| Section 9767.1 | Medical Provider Networks - Definitions |
| Section 9767.16 | Notice of Employee Rights Upon Termination or Cessation of Use of Medical Provider Network |
| Section 9810 | General Provisions |
| Section 9811 | Definitions |
| Section 9812 | Benefit Payment and Notices |

PRESENTATION OF WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION OF WRITTEN COMMENTS

Members of the public are invited to present written comments regarding this proposed modification. **Only comments concerning the proposed modification to the text of the regulations noticed in this comment period will be considered and responded to in the Final Statement of Reasons.**

Written comments should be addressed to:

Maureen Gray, Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

The Division's contact person must receive all written comments concerning the proposed modifications to the regulations no later than 5:00 p.m. on October 4, 2007.

Written comments may be submitted by facsimile transmission (FAX), addressed to the contact

Notice of second 15-Day Comment Period and Changes to Proposed Text:

8 CCR §§ 9767.1, 9767.16, 9810 - 9813.2 1

September 19, 2007

person at (510) 286-0687. Written comments may also be sent electronically (via e-mail), using the following e-mail address: dwcrules@dir.ca.gov

Due to the inherent risks of non-delivery by facsimile transmission, the Administrative Director suggests, but does not require, that a copy of any comments transmitted by facsimile transmission also be submitted by regular mail.

Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.

AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE

Copies of the original text, the modified text with modifications clearly indicated and the entire rulemaking file, are currently available for public review during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, at the offices of the Division of Workers' Compensation. The Division is located at 1515 Clay Street, 17th Floor, Oakland, California. Please contact the Division's regulations coordinator, Ms. Maureen Gray, at (510) 286-7100 to arrange to inspect the rulemaking file.

FORMAT OF PROPOSED MODIFICATIONS

Proposed Text Noticed for 45-Day Comment Period:

Deletions from the original regulatory text noticed on October 27, 2006 for the 45-comment period are indicated by single strike-through, thus: ~~deleted language~~.

Additions to the original regulatory text noticed on October 27, 2006 for the 45-comment period are indicated by single underlining, thus: added language.

Proposed Text Noticed for First 15-Day Comment Period on Modified Text:

Deletions from the proposed additions to the regulatory text noticed on October 27, 2006 for the 45-day comment period are indicated by strike-through underlining: ~~deleted language~~

Additions to the original regulatory text or the proposed revised regulatory text noticed on October 27, 2006 for the 45-day comment period are indicated by double underlining: added language.

Deletions from the regulatory text noticed on October 27, 2006 for the 45-comment period are indicated by double strike-through: ~~~~deleted language~~~~.

Proposed Text Noticed for this 15-Day Comment Period on Modified Text:

Newly proposed deletions from the previously proposed regulatory text are indicated by bold double strike-through underlining in light grey shading: ~~~~**deleted language**~~~~

Notice of second 15-Day Comment Period and Changes to Proposed Text:

Newly proposed additions to the previously proposed regulatory text are indicated by bold double underlining in light grey shading: **added language**.

SUMMARY OF PROPOSED CHANGES

Modifications to Section 9767.1: Medical Provider Networks - Definitions

In response to comments received, the proposed section has been modified.

Two erroneous cross-references in renumbered subdivision 14 have been corrected. The section has not been modified in any other respect.

Modifications to Section 9767.16: Notice of Employee Rights Upon Termination or Cessation of Use of Medical Provider Network

In response to comments received, the proposed section has been modified.

Subdivisions (a), (b), (c) and (d) have been consolidated and re-ordered to more clearly and concisely state the content requirements of a notice of termination or cessation of use of an MPN.

Newly renumbered subdivision (a)(1)(B) has been revised to clarify that the liability for continuing care extends to a self-insured employer as well as an insurer.

Newly renumbered subdivision (a)(1)(D) has been revised to clarify that the right to free choice of a physician under Labor Code section 4600 only applies if there will be a period of no MPN coverage due to the termination or cessation of use of an MPN, or before the effective date of change to a new MPN.

Subdivision (a)(2) has been revised to set forth the additional information required to be included in a notice if an MPN applicant or insured employer is changing MPN coverage to a different MPN.

Newly renumbered subdivision (a)(2)(A) is being revised to remove a redundant reference to a provider who is not in the subsequent MPN as being a “non MPN” provider.

New subdivision (a)(2)(B) is being adopted to clarify that the notice must include the notice that is required by sections 9767.12(a) and (c) for new MPN coverage and for a change of MPNs.

New subdivision (b) is being adopted to provide that the notice of termination or cessation of use of an MPN may be combined with the notice of the change to new MPN coverage if the combined notice meets all the MPN regulatory requirements.

Newly renumbered subdivision (c) is being revised to provide that if a notice of termination or cessation of use is timely filed and DWC does not act by the date the notice should be distributed, the notice shall be deemed approved.

Modifications to Section 9810: General Provisions.

In response to comments received, the section has been modified.

Subdivision (e) has been revised to withdraw the proposed elimination of the claims administrator's ability to withhold psychiatric reports which the physician has recommended not be provided to the employee.

Subdivision (i) has been revised by adding the phrase "as appropriate" at the end of the sentence to clarify that notices in both English and Spanish are not required to be given to all claimants in all cases, but only as appropriate.

Non-substantive grammatical and typographical errors have also been corrected in subdivisions (d) and (e).

Modifications to Section 9811: Definitions.

In response to comments received, the proposed section has been modified.

The proposed removal of the term "date of knowledge of injury" in subdivision (b) has been withdrawn and the remaining subdivisions renumbered accordingly.

Renumbered subdivision (f) has been revised for clarity by inserting the word "NOTE" to call attention to the fact that the final sentence of this subdivision should only be used in notices to employees subject to an ADR program under Labor Code section 3201.5, and then only if it is appropriate under the provisions of that ADR program.

Subdivision (i) has been revised to provide that the definition of the term "Permanent and Stationary Status" applies for all dates of injury after the effective date of the regulations, and is not dependent on the existence of a ratable medical report.

Modifications to Section 9812: Benefit Payment and Notices.

In response to comments received, portions of the proposed revisions have been modified.

Subdivisions (a)(2) and (a)(3) have been revised to provide that the notice to injured workers of the appropriate options available to an injured worker upon a **delay or denial** of any temporary disability payment is only required where the delay or denial is related to a medical issue.

Subdivision (f)(4) has been revised to provide that the provision to the injured worker with the notice of a copy of the most recent version of the DWC informative pamphlet "QME/AME Fact

Sheet” is only required if the basis for the claims administrator’s determination of no permanent disability is based on a medical report.

Subdivision (j) has been revised to provide that the provision with the notice to the injured worker of a copy of the most recent version of the DWC informative pamphlet “QME/AME Fact Sheet” is only required if the basis for the claims administrator’s delay in determining liability is based on a medical report.

Subdivisions (a)(2) and (3), (d)(1), (f)(2), (3) and (4), (g)(2) and (3), have been revised to delete the requirement that the envelopes containing various notices to an unrepresented injured worker will be required to contain specific advice in not less than 12 point font. This advice will instead now be required at the top of the first page of the notices themselves.

Non-substantive grammatical and typographical errors have also been corrected in subdivisions (d), (g)(3) and (i).

No additional modifications have been proposed at this time for the following sections:

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| Section 9813 | Vocational Rehabilitation Notices |
| Section 9813.1 | Notice of Supplemental Job Displacement Benefit and Notice of Offer of Modified or Alternative Work for Injuries Occurring on or after January 1, 2004 |
| Section 9813.2 | Return to Work Notices for Injuries Occurring on or after January 1, 2005 |

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